

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE TRANSPACIFIC PASSENGER AIR
TRANSPORTATION ANTITRUST
LITIGATION

No. C 07-05634 CRB

MDL 1913

This document relates to: ALL ACTIONS

**ORDER REGARDING
SOLICITATION OF STATE
DEPARTMENT OPINION**

Now pending are thirteen motions to dismiss the Consolidated Class Action Complaint (CAC), brought by various Defendants in this case. One of these motions argues that the act of state doctrine compels the Court to dismiss the claims in the CAC against Defendants Vietnam Airlines Corporation and Thai Airways International Public Company Limited. See dckt. no. 299. At the motion hearing on November 1, 2010, the Court expressed its interest in soliciting the opinion of the Department of State on this subject, in deference to the Executive Branch's primary role in foreign relations matters. This is a common practice. See, e.g., Doe v. Qi, 349 F. Supp.2d 1258, 1296, 1298 (N.D. Cal. 2004) (noting that the "views of the State Department, while not 'conclusive,' are entitled to respectful consideration," and that "the court has not found . . . a single case in which a court permitted a lawsuit to proceed in the face of an expression of concern such as that communicated by the State Department [there]"); Sarei v. Rio Tinto PLC, 221 F. Supp. 2d 1116, 1179-80 (C.D. Cal. 2002) (collecting cases in which district court "requested and

1 received a letter expressing the views of the . . . Department of State as to the applicability of
2 the act of state doctrine").

3 The Court has now concluded that it would indeed benefit from the Department of
4 State's view on the following question: whether the act of state doctrine applies to the setting
5 of passenger air fares by Vietnam Airlines and Thai Airways. Accordingly, the Court hereby
6 ORDERS counsel for Plaintiffs and counsel for Defendants Vietnam Airlines and Thai
7 Airways to meet and confer on this issue, and to notify the Court within fourteen (14) days of
8 this Order of the procedure for soliciting the opinion of the Department of State.

9 **IT IS SO ORDERED.**



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12 Dated: November 22, 2010
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE